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# Congress of the United States

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## *Opening Statement of Chairman Jon Porter*

Hearing of the House Government Reform  
Subcommittee on Federal Workforce and Agency Organization

### **“Fair and Balanced? The Status of Pay and Benefits for Non-Article III Judges”**

May 16, 2006

Thank you all for joining us today. Judge Roy Bean, the self-proclaimed “Law West of the Pecos” during the late 1880’s once said, “You’ll get a fair trial followed by a first class hanging.” While people may have been forced to endure such a judge in the Wild West, no one today wants to have their case decided by an arbitrary judge. The role that judges play in holding our society together is often underestimated. We rely on judges serving in courts of law or in administrative tribunals to peacefully resolve our disputes according to the rule of law.

When most people think of a federal judge the first thing that probably comes to their mind is the type of judge in a court of law under Article III of the Constitution. However, what many people fail to realize is that there is another group of federal judges serving in courts created outside of Article III. Congress has created special legislative courts under Article I of the Constitution, staffed by federal judges, and various administrative boards, staffed by Administrative Law Judges (ALJs).

These judges decide the cases which affect the functioning of the Government and the everyday lives of people across the country. These judges decide cases involving interpretation of complex regulatory issues, social security disability appeals, and deportation and immigration cases. Nothing could be more important to the litigants before these tribunals than the right to due process and a fair hearing. That is why it is important for us to examine how these non-Article III judges are recruited, retained, and paid. It is important that only the best and brightest resolve our disputes.

Today, this Subcommittee will explore issues pertaining to the recruitment and retention of these judges, including pay compression, the utility of implementing an ALJ pay-for-performance, OPM’s management of the ALJ program, and the retirement benefits provided to ALJs. There are over 1,400 ALJs across the government responsible for hearing disputes over their agency’s decisions. Most of them work at the Social Security Administration, where they make judgments on citizen appeals. Non-Article III judges and ALJs have indicated to me that pay compression is an especially important issue. Pay compression describes the condition

where judges a reach the statutory cap and are paid in a narrow range, at or near the pay cap. This problem can affect the ability to hire and retain an appropriate number of judges. Today we will examine this and other issues to clarify the issues and discuss possible solutions.

I thank our witnesses for being here, and I look forward to the discussion.

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